

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER 1 & PETITIONER 2, Petitioner, v. AUDITING DIVISION OF THE UTAH STATE TAX COMMISSION, Respondent.	INITIAL HEARING ORDER Appeal No. 10-0486 Account No. ##### Tax Type: Income Tax Tax Years: 2006 & 2007 Judge: Nielson-Larios
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Presiding:

Aimee Nielson-Larios, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER REP., Representative
For Respondent: RESPONDENT REP. 1, Assistant Attorney General
RESPONDENT REP. 2, Auditing Division

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for an Initial Hearing pursuant to the provisions of Utah Code Ann. §59-1-502.5, on June 29, 2010. On January 19, 2010, Respondent (the “Division”) issued Notices of Deficiency and Audit Change (“Statutory Notices”) to Petitioner (the “Taxpayers”), in which the Division imposed additional tax and interest as follows:

<u>Year</u>	<u>Tax</u>	<u>Penalties</u>	<u>Interest</u>	<u>Total</u>
2006	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$
2007	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$

Interest has continued to accrue. The audit tax is based on the Division’s denial of the special needs adoption credit (the “Credit”) for the two years. The parties disagree on the meaning of “a claimant who **adopts in this state** . . . may claim . . . [the Credit]” (emphasis added) found in Utah Code §59-10-1104(2) (2006-07). The parties agreed that if this Order finds the Division’s interpretation to be correct, then the Taxpayers would not be entitled to the Credit for either 2006 or 2007. However, if this Order finds the Taxpayers’ interpretation to be correct, then the Taxpayers would be entitled to the Credit for 2006, but for 2007, the Taxpayers would need to submit additional paperwork to the Division.

APPLICABLE LAW

Utah Code §59-10-1104(2006-07)¹ states in part:

- (1) As used in this section, a "child who has a special need" means a child who meets at least one of the following conditions:
 - (a) the child is five years of age or older;
 - (b) the child:
 - (i) is under the age of 18; and
 - (ii) has a physical, emotional, or mental disability; or
 - (c) the child is a member of a sibling group placed together for adoption.
- (2) For taxable years beginning on or after January 1, 2005, a claimant who **adopts in this state** a child who has a special need may claim on the claimant's individual income tax return for the taxable year a refundable tax credit of \$1,000 against taxes otherwise due under this chapter for:
 - (a) adoptions for which a court issues an order granting the adoption on or after January 1, 2005;
 - (b) the taxable year during which a court issues an order granting the adoption; and
 - (c) each child who has a special need whom the claimant adopts.

. . . .

(Emphasis added.)

Utah Code § 59-10-1102(1) (2006-07) defines claimant as follows:

- (a) Except as provided in Subsection (1)(b) or Subsection 59-10-1103(1)(a), "**claimant**" means a resident or nonresident person.
- (b) "Claimant" does not include an estate or trust.

(Emphasis added.)

DISCUSSION

The Taxpayers' representative explained that in 2006 the Taxpayers started adoption proceedings for two children from COUNTRY 1.² The first adoption was finalized in 2006, so the Taxpayers took a Credit for the 2006 tax year. The second adoption was finalized in 2007, so the Taxpayers took a Credit for the 2007 tax year as well. The Taxpayers' representative said the adoptions were finalized in COUNTRY 1 and then registered in Utah. She asserted that the Taxpayers qualify for the Credits because they were residents of the State of Utah for the two years, when the adoptions were finalized. The Taxpayers' representative believes the registrations of the adoptions in Utah involved the Utah courts, but she was unsure what steps the Taxpayers

¹ This Order cites to and applies the Utah Individual Income Tax Act that was in effect for the 2006-07 tax years, the years at issue in this appeal.

² Although the Taxpayers' representative said that the children were adopted from COUNTRY 1, Exhibit 3 submitted

took to register. The Taxpayers' representative proposed a hypothetical question of whether a NON-UTAH STATE resident could qualify for the Credit if that person finalized an adoption in Utah.

The Division asserted that the language "adopts in this state" requires the adoption to be finalized in the state of Utah. The Division said that a resident or nonresident of Utah could "adopt[] in this state" because the definition of claimant found in §59-10-1102(1) includes both residents and nonresidents. Thus, the Division asserted that a NON-UTAH STATE resident could qualify for the Credit if that person finalized an adoption in Utah.

The Division explained that the Credit does not apply to adoptions that are only registered in Utah because registrations are less than adoptions. The Division hypothesized that the Utah Legislature wanted to encourage people to adopt special needs children who are in Utah being supported by State of Utah resources until they are adopted.

The Division's Exhibit 3 included a copy of an COUNTRY 2 court's order approving the adoption of one of the children.

Under §§ 59-10-1104 and 59-10-1102(1), a resident or nonresident person must "adopt[] in this state" to qualify for the Credit. Section 59-10-1104(2)(a)-(b) links adoption to when "a court issues an order granting the adoption." In this case, the testimony of the Taxpayer's representative, supported by Division's Exhibit 3, shows that foreign courts issued the orders granting the adoptions. Additionally, there was no evidence showing that Utah courts also issued orders granting the adoptions, and it was unclear what role the Utah courts played in registering the adoptions in Utah. Thus, the Taxpayers adopted the children in COUNTRY 1 or COUNTRY 2 when the foreign courts issued their orders. The children were not "adopt[ed] in this state."

The interpretation of the Taxpayers' representative that "a claimant who adopts in this state" means the claimant must be a Utah resident is not persuasive. The requirement of residency or non-residency is addressed by the definition of claimant. Additionally, the language "in this state" modifies "adopts" not "claimant." Thus, the statute does not require the claimant to be a Utah resident; rather, it allows the claimant to be a resident or nonresident of Utah. However, the claimant must "adopt[] in this state."

by the Division shows that one child was adopted from COUNTRY 2.

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In conclusion, the Taxpayers have not shown that they adopted the children in this state. Thus, they have also not shown that the Division's assessment is incorrect. Therefore, the assessment should be sustained.

Aimee Nielson-Larios
Administrative Law Judge

DECISION AND ORDER

Based upon the foregoing, the Commission sustains the Division's assessment in its entirety. The Taxpayers' appeal is denied. It is so ordered.

This decision does not limit a party's right to a Formal Hearing. However, this Decision and Order will become the Final Decision and Order of the Commission unless any party to this case files a written request within thirty (30) days of the date of this decision to proceed to a Formal Hearing. Such a request shall be mailed to the address listed below and must include the Petitioner's name, address, and appeal number:

Utah State Tax Commission
Appeals Division
210 North 1950 West
Salt Lake City, Utah 84134

Failure to request a Formal Hearing will preclude any further appeal rights in this matter.

DATED this _____ day of _____, 2010.

R. Bruce Johnson
Commission Chair

Marc B. Johnson
Commissioner

Michael J. Cragun
Commissioner

DISSENT

I respectfully dissent from my colleagues. I would find in favor of the Petitioner because I hold the Taxpayer **is** "a claimant who adopt[ed] **in** this state" based on the language found in the Judicial Code, Utah Code Annotated (UCA) **78-30-8.6(1)-(2) Adoption order from foreign country**, which states:

- (1) Except as otherwise provided by federal law, an adoption order rendered to a resident of this state that is made by a foreign country **shall be recognized by the courts of this state and enforced as if the order were rendered by a court in this state.**

- (2) A person who adopts a child in a foreign country may register the order in this state. A petition for registration of a foreign adoption order may be combined with a petition for a name change. If the court finds that the foreign adoption order meets the requirements of Subsection (1), the court shall order the state registrar to:
 - (a) file the order pursuant to Section 78-30-9; and
 - (b) file a certificate of birth for the child pursuant to Section 26-2-28.

(Emphasis added.)

It is undisputed the Taxpayers were residents of this state when the adoptions of their two children were finalized. Per UCA 78-30-8.6(1) Utah courts must recognize and enforce the Taxpayers' foreign adoption orders registered in this state as if a Utah court rendered the orders. This counters the Division's position that registrations are less than adoptions. Thus the Taxpayer's adoption orders are the same as adoption orders rendered by a Utah court and as such the Taxpayer's adoptions are adoptions in this state. It is undisputed the Taxpayers adopted special needs children, therefore the Tax Commission must recognize the Taxpayers as claimants whose adoptions qualify for a refundable tax credit of \$\$\$\$ against taxes otherwise due.

Finally I offer an alternative hypothesis to the Division's theory of legislative intent. It is possible the Utah Legislature recognized that Utah residents who are willing to adopt special needs children are helping all of society. Distinguishing the additional challenges these adoptive families may encounter, the Legislature wanted to help offset some of the costs that burden Utah families who embrace these special needs children and provide them a loving home.

D'Arcy Dixon Pignanelli
Commissioner

Notice: If a Formal Hearing is not requested as discussed above, failure to pay the balance resulting from this order within thirty (30) days from the date of this order may result in a late payment penalty.

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